



Comptroller General
of the United States

118207

Washington, D.C. 20548

Decision

Matter of: Triangle Services, Inc.

File: B-256616.2

Date: July 15, 1994

D. Lee Roberts, Jr., Esq., Smith, Currie & Hancock, for the protester.
Emily C. Hewitt, Esq., and Lionel G. Batley, Jr., Esq., General Services Administration, for the agency.
Charles W. Morrow, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that bonding requirements in a solicitation for mechanical maintenance services were unduly restrictive because bonds must cover the 36-month base period of the contract is denied where the agency reasonably determined that the bonds were required to assure continuous efficient service and to protect government property, and that the 36-month base period would actually maximize competition and reduce contractor turnover.

DECISION

Triangle Services, Inc. protests the bid and performance bond requirements in request for proposals (RFP) No. GS-02P-93-CTC-0088, issued by the General Services Administration (GSA), for mechanical maintenance services in a federal building complex. Triangle contends that the RFP's bonding requirements are unduly restrictive in light of the contract's base term of 36 months.

We deny the protest.

The RFP, issued on December 29, 1993, called for mechanical maintenance services at the Jacob K. Javits Federal Building, the United States Court of International Trade, and the Howard Street Parking Facility building complex in New York, New York, for a base period of 36 months with two

36-month option periods.¹ Offerors were required to furnish a bid guarantee in an amount of 20 percent of the total evaluated price for the initial 36-month base period or \$3,000,000, whichever was lower, and the successful offeror was required to furnish a performance bond in an amount equal to 25 percent of the contract price for the initial base period and for each option period.

Triangle argues that the bond requirements are unduly restrictive because, while it can qualify for the dollar amount of the bond, bonding companies are reluctant to issue bonds for a duration of 36 months. Triangle contends that the 36-month base period is not in the government's best interest because it will result in reduced competition and because the government's needs could be satisfied by a shorter bond term.

While bonding requirements may result in a restriction of competition, an agency has the discretion to impose bonding requirements in appropriate circumstances as a necessary and proper means to secure fulfillment of the contractor's obligations. See Iowa-Illinois Cleaning Co.; Patco Indus., B-254805 et al., Jan. 18, 1994, 94-1 CPD ¶ 22. While agencies generally should not require performance bonds in nonconstruction contracts, they properly may be required on any type of contract when necessary to protect the government's interests. FAR §§ 28.103-1 and 28.103-2(a); Iowa-Illinois Cleaning Co., supra. An agency may require a bid guarantee whenever there is a requirement for a performance bond. FAR § 28.101-1. In reviewing the bond requirements contained in a particular solicitation, we look only to see if they are reasonable and imposed in good faith. Id.; Maintrac Corp., B-251500, Mar. 22, 1993, 93-1 CPD ¶ 257.

GSA explains that the bonding requirements were necessary to ensure uninterrupted maintenance services under the contract. These services cover all of the buildings' mechanical, electrical and utility systems, such as heating, air conditioning, lighting and fire protection. GSA reports that any disruption in the services would seriously impact the mission of the agencies and endanger the health and safety of federal employees and the public. In this regard, GSA notes that the Javits building, the second largest federal building in the world, houses a multitude of

¹GSA's Associate Administrator for Acquisition Policy has approved the use of solicitations that contemplate the award of building service contracts for a base period of 3 years with two 3-year option periods. See Federal Acquisition Regulation (FAR) § 17.204(e); GSA Acquisition Regulation, 48 C.F.R. § 517.204.

government agencies, including some which are involved in law enforcement and must operate on a continuous basis. The bonds are necessary, according to GSA, to avoid disruption of vital operations and to protect against damage to government property. Regarding the contract term, GSA explains that a 36-month period with two 36-month option periods was the best method of ensuring continuous efficient service, since it would reduce contractor turnover and enable the contractor to become familiar with the mechanical systems. By using the 36-month base period, the government would, in the agency's view, maximize competition and obtain better prices because the cost risks associated with a short base period are eliminated due to a longer cash-flow period, and because other costs, such as start-up costs, can be amortized over a longer period, thereby allowing companies to pass savings on to the government in the form of lower proposal pricing.

We find the RFP's bonding requirements to be reasonable. Triangle does not dispute the critical nature of the services being solicited or the government's requirement that the services be provided on a continuous basis, but only asserts, based upon its inability to obtain bonding for a 36-month period, that the 36-month base period will result in higher prices and reduced competition. Triangle's disagreement with the agency's reasoned determination that a 36-month period would result in greater competition, more efficient contract performance, and lower prices is not sufficient to show that the agency's determination was unreasonable. The fact that Triangle may not itself be able to obtain bonding for 36 months does not establish that GSA's otherwise legitimate requirement for bonds was improper or that the agency acted unreasonably in requiring a 36-month base term. See AT&T, B-253069, June 21, 1993, 93-1 CPD ¶ 479; Maintrac Corp., supra.

The protest is denied.

/s/ James A. Spangenberg
for Robert P. Murphy
Acting General Counsel

²The protester argues for the first time in its comments on the agency's report on the protest that the potential 9-year term of the contract was improper. This post-closing date protest of an alleged apparent solicitation impropriety is untimely under our Bid Protest Regulations. See 4 C.F.R. § 21.2(a)(1) (1994).